CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:		Force	Discourt.	U.S.
Arthur Albano		Squad #4	201600583	Ø	Abuse	O.L.	☐ Injury
Incident Date(s)		Location of Incident:	ı	P	recinct:	18 Mo. SOL	EO SOL
Wednesday, 01/20/2016 8:30 PM		Sedgwick Avenue and Terrace	Hall of Fame		46	7/20/2017	7/20/2017
Date/Time CV Reported		CV Reported At:	How CV Reported:		Date/Time	Received at CCI	RB
Wed, 01/20/2016 8:42 PM		CCRB	Call Processing System		Wed, 01/20	0/2016 8:42 PM	
Complainant/Victim	Type	pe Home Address					
Subject Officer(s)	Shield	TaxID	Command				
1 *	Sincia	- 4	001111111111111111111111111111111111111				
1. POM Johnny Chalen	09575	947694	046 PCT				
		947694					
1. POM Johnny Chalen	09575	947694 Tax No	046 PCT				
1. POM Johnny Chalen Witness Officer(s)	09575 Shield N	947694 Tax No 954029	046 PCT Cmd Name				
1. POM Johnny Chalen Witness Officer(s) 1. POM Nicholas Kourounis	09575 Shield N 28949	947694 o Tax No 954029 949470	046 PCT Cmd Name 046 PCT		Inve	stigator Recon	nmendation
1. POM Johnny Chalen Witness Officer(s) 1. POM Nicholas Kourounis 2. POM Jasen Perez	09575 Shield N 28949 10775 Allegation	947694 o Tax No 954029 949470	046 PCT Cmd Name 046 PCT 046 PCT		Inve	stigator Recon	nmendation
1. POM Johnny Chalen Witness Officer(s) 1. POM Nicholas Kourounis 2. POM Jasen Perez Officer(s)	09575 Shield N 28949 10775 Allegatio Abuse: P	947694 Tax No 954029 949470	046 PCT Cmd Name 046 PCT 046 PCT ed \$87(2)(b)		Inve	stigator Recon	nmendation

Case Summary

On January 20, 2016, at approximately 7:30 p.m., \$87(2)(6) pulled over his vehicle near the intersection of Sedgewick Avenue and Hall of Fame Terrace, in the Bronx. \$87(2)(6) parked in a legal parking spot, and exited his vehicle to check his tires, since the vehicle felt strange.

As he was checking his rear, passenger's side tire, an unmarked sedan pulled up beside sparked car. Three plainclothes officers, PO Johnny Chalen, PO Jasen Perez, and PO Nicholas Kourounis of the 46th Precinct Anti-Crime team stared at him from the open window of their vehicle.

not knowing at the time that they were officers, stated to the officers, "What are you guys looking at?" The officers stepped out of the vehicle, and displayed their shields.

PO Chalen approached \$87(2)(b) and asked him if he was urinating, which \$87(2)(b) denied. PO Chalen then asked for \$87(2)(b) s identification and \$87(2)(b) provided it. PO Chalen then told \$87(2)(b) to place his hands on his vehicle, with which \$87(2)(b) complied, and PO Chalen frisked \$87(2)(b) (Allegations A and B).

PO Chalen asked \$87(2)(b) again if he was urinating and \$87(2)(b) again denied

PO Chalen asked \$87(2)(b) again if he was urinating and \$87(2)(b) again denied doing so. PO Chalen then gave \$87(2)(b) back his identification and started to go back to his vehicle. \$87(2)(b) stated to the group of officers, "Why are you guys harassing me? I'm just standing here not doing anything." PO Chalen allegedly responded, "Shut the fuck up." (Allegation C).

repeated, "I'm not doing anything, you guys keep harassing me, that's not right." PO Chalen then requested \$87(2)(b) so identification again and ordered him to return to the driver's seat of the vehicle.

remained in his vehicle for approximately 30 minutes. \$87(2)(b) was issued two summonses; \$87(2)(b)

Video Footage

A canvass for this location was conducted via Google Maps and no cameras were located near the location. Body Worn Cameras were not assigned to these officers and there was no TARU cameras in the area. §87(2)(9)

Mediation, Civil and Criminal Histories

- §87(2)(b) rejected mediation as an alternative resolution to this complaint.
- A notice of claim inquiry was sent to the New York City Comptroller's office on March 14, 2016. A response to this inquiry will be included in the case file upon its receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by or involving § 87(2)(b)
- PO Johnny Chalen has been a member of the service for seven years and there are no substantiated CCRB allegations against him. §87(2)(9)

Findings and Recommendations

Allegations Not Pleaded

• Abuse: It is undisputed that the officers approached \$87(2)(b) because they suspected he was urinating. PO Chalen initially used his discretion and warned \$87(2)(b)

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Allegation A — Abuse of Authority: PO Johnny Chalen stopped	§ 87(2)(g)			
It is undisputed that PO Chalen stopped				
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been raining that day, and there were residual piles of snow that caused puddles all over the ground and street. All of the officers were consistent that they observed [57200] make a motion towards his waistband, as if zipping up his pants, before the initial approach. PO Chalen also stated that he observed urination on the sidewalk, on [57200] shoes, and that [57200] shoes are partially undone. PO Kourounis recalled PO Chalen stated to [57200] that he saw urine on the ground, however, he was not in a position to see any urine on the ground, as [57200] should be sholded by the ground should be showed by the ground and the sidewalk. None of the officers recall that it rained or that there was any residual snow on the streets or sidewalk. A search of Weather Underground revealed that it had not rained on the incident date as [57200] had claimed. However, it did snow three days prior on January 17, 2016 0.6 inches. New York Administrative code § 16-118 (6) prohibits swill, brine, offensive animal matter, noxious liquid or other filthy matter of any kind to be allowed by a person to fall upon or run into any street, or public place, or be taken to or put therein (Board Review 05). ***Street** **Allegation B - Abuse of Authority: PO Johnny Chalen frisked [57200] **Street** **Allegation B - Abuse of Authority: PO Johnny Chalen frisked [57200] **Street** **Allegation B - Abuse of Authority: PO Johnny Chalen frisked [57200] **Street** **Allegation B - Abuse of Authority: PO Johnny Chalen frisked [57200] **Street** **Allegation B - Abuse of Authority: PO Johnny Chalen frisked [57200] **Allegation B - Abuse of Authority: PO Johnny Chalen frisked [57200] **Allegation B - Abuse of Authority: PO Johnny Chalen frisked [57200] **Allegation B - Abuse of Authority: PO Johnny Chalen frisked [57200] **Allegation B - Abuse of Authority: PO Johnny Chalen frisked [57200] **Allegation B - Abuse of Authority: PO Johnny Chalen frisked [57200] **Allegation B - Abuse of Authority: PO Johnny Chalen frisked [57200] **Al	It is undisp \$87(2)(b) was urinate of his vehicle beca on the sidewalk.	puted that PO Chalen stopped ting on a public sidewalk. Ac ause he felt as if his vehicle w stated that after the	based on the coording to \$87(2)(b) tas driving strangely, and the initial approach, PO (he suspicion that he was checking the tires he denied ever urinating thalen pointed to a puddle
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PO Kourounis testified that it is normal procedure to frisk any individual that is observed committing a violation on a public sidewalk. PO Kourounis stated that the purpose of the frisk is for the officers' safety, and it did not matter what the violation was for. PO Kourounis confirmed that it is normal procedure to frisk an individual of whom officers were intending to issue a summons for public urination, absent any additional factors. PO Kourounis denied hearing PO Chalen instruct § 87(2)(b) to remove his hands from his pockets, or move them away from his pockets. PO Perez (Board Review 04) stated that he remained by his driver's side door throughout the interaction and did not hear the interaction between \$87(2)(b) and PO Chalen. Police must harbor a reasonable suspicion that a person subjected to a frisk is armed and dangerous. Arizona v. Johnson 555 U.S. 323 (2009). Behavior which is susceptible to innocent as well as culpable interpretation, will not constitute probable cause. Equally, innocuous behavior alone will not generate a founded or reasonable suspicion that a crime is at hand. People v. Debour 40 N.Y.2d 210 (1976) (Board Review 05) Allegation C- Discourtesy: PO Johnny Chalen spoke discourteously to § 87(2)(b) stated to the officers as they were leaving that they were just harassing him, and as a result, PO Chalen took back § 37(2)(b) sidentification and issued him a summons. According to §87(2)(b) when he told the officers that they were harassing him, PO Chalen responded, "Shut the fuck up," before taking back his identification. PO Chalen, PO Perez, and PO Kourounis all denied that PO Chalen or any other officer used any profanity towards § 87(2)(6) including the statement "Shut the fuck up." § 87(2)(g) Squad: 4 Investigator: Signature Print Date

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Squad Leader	•		
	Title/Signature	Print	Date
Reviewer:			
	Title/Signature	Print	Date